



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Rhine Air  
File: B-226907  
Date: July 29, 1987

## DIGEST

1. Protest challenging agency determination that air duct hose offered as an alternate to approved source was technically acceptable is denied since agency has primary responsibility for establishing procedures to determine product acceptability and for determining whether item will satisfy government's minimum needs, and protester has not shown that agency determination was fraudulent or constituted willful misconduct.

2. Protester is not considered an interested party under Bid Protest Regulations to protest award to offeror who offered a technically acceptable alternate to the agency-approved item, to be used with fuel cell repair system manufactured by protester, where basis of protest is protester's concern for the safety and reliability of its system and for its potential liability if the alternate part is used.

## DECISION

Rhine Air protests the award to Industrial Tube Corporation under request for quotations (RFQ) No. DLA700-87-Q-GA51, issued by the Defense Logistics Agency (DLA) for 57 air duct hoses, national stock No. (NSN) 4720-01-150-2248. The duct hoses are to be used as a part for a pneumatic powered fuel cell repair system manufactured by Rhine Air. The system is designed to ventilate explosive fumes from the fuel cells of military aircraft to provide a safer environment for the performance of maintenance operations.

Rhine Air contends that manufacture of the ducting by a company, other than itself, which is not knowledgeable of all the components and basic specifications of the Rhine Air fuel cell ventilation and repair system jeopardizes the entire system and personnel who work inside and outside of

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the fuel cells. The protester further states that it will not assume responsibility for the system unless all components have been approved by Rhine Air or by the Naval Air Engineering Center (NAEC).

The RFQ listed the approved manufacturer and part number for the ducting as Rhine part No. NFRA-2X, but also permitted alternate offers, provided that the alternate is described by reference to a manufacturer's part number. Rhine quoted a price of \$222 per unit for its duct hoses. Industrial Tube quoted a price of \$193.20 per unit for its ducting and submitted a drawing and a sample of the part it offered for purposes of evaluation. The Directorate of Technical Operations at the Defense Construction Supply Center (DCSC) evaluated the alternate offered by Industrial Tube and determined that it was technically acceptable. A purchase order was subsequently issued to Industrial Tube for the requirement.

Rhine Air, in effect, challenges the adequacy of the agency's evaluation of the alternate ducting and insists that its system "requires MIL I Inspection on all parts used with the system." The protester argues that the award to Industrial Tube renders of no effect 2 years' testing of its system by NAEC. Rhine Air maintains that the system and its components are considered life support equipment, but DLA states that the 12-inch (diameter) by 15-foot long air duct hose is coded noncritical by the Engineering Support Activity.

The contracting agency has the primary responsibility for determining its minimum needs and for determining whether an offered item will satisfy those needs since it is the agency that must bear the burden of difficulties incurred by reason of a defective evaluation. Sony Corp. of America, B-225512, Feb. 24, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-1 C.P.D. ¶ 212. Consistent with this principle, the responsibility for establishing procedures necessary to determine product acceptability also rests with the contracting agency. See Ingersoll-Rand Co., B-224706; B-224849, Dec. 22, 1986, 86-2 C.P.D. ¶ 701. In view of the agency's discretion to make such determinations, we will not question the agency's decision to accept a previously unapproved source's alternate offer in an approved source procurement unless the decision was tantamount to fraud or willful misconduct. Sony Corp. of America, B-225512, supra.

In this instance, Industrial Tube submitted the data required by the RFQ for determination of the acceptability of its duct, and evaluation by the agency's Value Engineering Office found that it met the Government's minimum technical requirements. While Rhine Air disagrees

with that determination, it has not shown that DLA's decision was fraudulent or that it constituted willful misconduct. The protest is, therefore, denied on this basis.

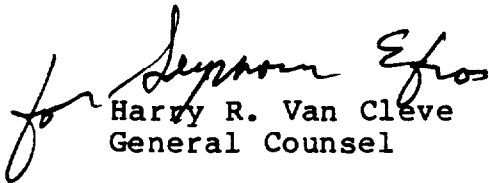
In its comments on the agency report, the protester states that its objective in protesting the award to Industrial Tube is not to prevent DCSC from obtaining another source for the ducting, but that it is concerned about the "Safety, Reliability and Liability of our system" if the use of this alternate part is approved without having been tested with the entire Rhine Air system. Notwithstanding the protester's stated purpose for protesting, we cannot disregard the fact that, were this protest sustained, its effect would be to eliminate what now appears to be the only offer in competition with that of Rhine Air for this procurement.

We note, however, that consistent with the objective of our bid protest function to ensure full and open competition for government contracts, our Office generally will not review a protest that has the purpose or effect, whether explicit or implicit, of reducing competition to the benefit of the protester. Ray Service Co., 64 Comp. Gen. 528 (1985), 85-1 C.P.D. ¶ 582; Ingersoll-Rand Co., B-224706; B-224849, supra, 86-1 C.P.D. ¶ 701. Moreover, for a protest to be considered by our Office, under our Bid Protest Regulations the protester must be an interested party. 4 C.F.R. § 21.1(a) (1986). In determining whether a protester is an interested party, we examine the degree to which the asserted interest is established and direct. Travenol Laboratories, Inc., B-215739; B-216916, Jan. 29, 1985, 85-1 C.P.D. ¶ 114. As a part of this examination, we consider the nature of the issues raised and the direct or indirect benefit or relief sought by the protester. See Fry Communications, Inc., B-220451, Mar. 18, 1985, 85-1 C.P.D. ¶ 265.

Rhine Air's expressed concern in protesting the award to Industrial tube--the safety and reliability of its fuel cell repair system and Rhine Air's potential liability if Industrial Tube's ducting is used without further tests--is, in light of the agency's approval of the alternate part, remote to the point of being speculative. While we appreciate the protester's stated concern for the safety of personnel and aircraft during the repair of fuel cells, on the basis of what Rhine Air states as the objective of its protest, we do not consider it to have a sufficient interest under our Bid Protest Regulations to protest the award to Industrial Tube. Travenol Laboratories, Inc., B-215739; B-216961, supra, 85-1 C.P.D. ¶ 114. The protest is dismissed on this basis.

Rhine Air also alleged in its initial submission that the proposed awardee does not manufacture ducting having the characteristics of the ducting Rhine Air manufacturers for use with its system, and that the ducting offered by the proposed awardee will be manufactured in Switzerland. In its report, DLA states that the solicitation, which is subject to the Buy American Act, requires identification of any foreign items to be furnished, and since Industrial Tube did not indicate that it would furnish a foreign item, it is obligated to provide a domestic item. Since the protester has not rebutted DLA's response to this allegation, we consider it to have abandoned this issue. TLC Systems, B-225871, Mar. 17, 1987, 87-1 C.P.D. ¶ 297.

The protest is denied in part and dismissed in part.

  
Harry R. Van Cleve  
General Counsel